

## **RULES REVIEW COMMISSION**

**July 21, 2011**

### **MINUTES**

The Rules Review Commission met on Thursday, July 21, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Margaret Currin, Addison Bell, Garth K. Dunklin, George Lucier, Pete Osborne, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel, and Dana Vojtko, Julie Edwards and Tammara Chalmers

The following people were among those attending the meeting:

Barry Bloch	Department of Justice
Julia George	Board of Nursing
Linda Burhans	Board of Nursing
Jean Stanley	Board of Nursing
Julie Woodson	NC Association of Realtors
Bob Hamilton	ABC Commission
Reneé Batts	Community Colleges
David Tuttle	Board of Engineers and Surveyors
Jane Gilchrist	Department of Labor
Natalie Caviness	Department of Labor
Erin Gould	Department of Labor
Jack Nichols	Allen, Pinnix & Nichols
Julia Lohman	Sheriffs' Education and Standards Commission
Wilson Hayman	Health Network Solutions
Vance Kinlaw	NC Chiropractic Board
Barbara Geiger	Irrigation Contractors Licensing Board
Bob Hensley	DHHS/Division of Social Services
Charles Wilkins	Board of Marriage and Family Therapy Licensure Board
Dedra Alston	DHHS/Division of Child Development
Anca Grozav	Office of State Budget and Management
Michael Byrne	Moore & Van Allen
Felicia Gore Hoover	Occupational Safety and Health Review Commission
Carlotta Dixon	Division of Social Services

Prior to the scheduled meeting on July 21, 2011, Judge Ralph A. Walker was sworn in by Administrative Law Judge Augustus B. Elkins II.

The meeting was called to order at 1:32 p.m. Judge Walker, as senior member present presided over the meeting. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

Chairman Walker recognized former Commissioner Dan McLawhorn.

New Commissioners Addison Bell, Margaret Currin, Garth K. Dunklin, Pete Osborne, Bob Rippy, Stephanie Simpson and Faylene Whitaker were welcomed and introduced by Chairman Walker. He then administered the oath of office to the new Commissioners.

Chairman Walker read into the record the following statements of economic interest for:

Addison Bell, which stated there was no actual conflict of interest;

Margaret Currin, which stated there was no actual conflict of interest;

Garth K. Dunklin, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Mr. Dunklin is an attorney with the law firm of Wishart, Norris, Henninger and Pittman, P.A. Should any employees or partners of the firm, or any of the firm's current or former clients, come before the Commission for official action, Mr. Dunklin should exercise appropriate caution in the performance of his public duties. This would include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions;

Pete Osborne, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Mr. Osborne owns Osborne Company, Inc., a general contracting company. He should exercise appropriate caution in the performance of his public duties should any issues impacting Osborne Company, Inc., come before the Commission for official action. This would include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions;

Bob Rippy, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Mr. Rippy owns Wrightsville Farms Management, Inc., a waterpark, amusement, concessions and rides business and is also a member of the Amusement Device Advisory Board. He should exercise appropriate caution in the performance of his public duties should any issues impacting Wrightsville Farms Management, Inc., including the Department of Labor/Amusement Device Advisory Board, come before the Commission for official action. This would include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions;

Stephanie Simpson, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Ms. Simpson's spouse is an attorney with the law firm of Smith, Anderson, Blount, Dorsett, Mitchell and Jernigan, LLP. Should any employees or partners of the firm, or any of the firm's current or former clients, come before the Commission for official action, she must exercise appropriate caution in the performance of her public duties. This would include recusing herself to the extent that those interests would influence or could reasonably appear to influence her actions;

Faylene Whitaker, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Ms. Whitaker owns Whitaker Farms, a farming business including tobacco, field tomatoes, strawberries, pumpkins as well as trees, shrubs, flowering plants, mulch and stone. Ms. Whitaker should exercise appropriate caution in the

performance of her public duties should issues impacting Whitaker Farms come before the Commission for official action. This would include recusing herself to the extent that those interests would influence or could reasonably appear to influence her actions.

### **APPROVAL OF MINUTES**

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the June 16, 2011 meeting. There were none and the minutes were approved as distributed.

### **FOLLOW-UP MATTERS**

13 NCAC 13 .0211 – Department of Labor. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 10 .0211 – Board of Chiropractic Examiners. The Commission approved the rewritten rule submitted by the agency. Wilson Hayman appeared and spoke. He raised no objections to the rewritten rule.

21 NCAC 23 .0102, .0401, .0401, .0404, .0406 – Irrigation Contractor's Licensing Board. The Commission approved the rewritten rules submitted by the agency. Commissioners Bell, Currin, Lucier, Osborne, Rippy, Simpson and Whitaker voted for the motion to approve the rule. Commissioner Dunklin voted against the motion.

21 NCAC 31 .0201, .0501, .0801 – Marriage and Family Therapy Licensure Board. No rewritten rule was submitted by the agency and no action was taken.

21 NCAC 64 .0307 – Board of Examiners for Speech and Language Pathologists and Audiologists. No rewritten rule was submitted by the agency and no action was taken.

### **LOG OF FILINGS**

Chairman Walker presided over the review of the log of permanent rules.

### **Alcoholic Beverage Control Commission**

All rules were approved unanimously.

### **Child Care Commission**

All rules were approved unanimously.

### **Social Services Commission**

All rules were approved unanimously with the following exceptions:

10A NCAC 70G .0403 – The Commission objected to this rule based on lack of statutory authority. Subparagraph (e)(1) is not consistent with G.S. 131D-10.3(h)(2) as written. The rule is a complete prohibition on certain applicants being licensed while the statute only prohibits licensure for a certain time period. Since the General Assembly has set the standard, there is no authority cited for the agency to change it. Similarly, Subparagraph (e)(2) is not consistent with G.S. 131D-10.3(h)(1) by making an absolute prohibition beyond 60 months. There is the same issue in Subparagraph (e)(4).

10A NCAC 70G .0503 – This rule was withdrawn by the agency.

10A NCAC 70H .0114 – The Commission objected to this rule based on lack of statutory authority. Subparagraph (e)(1) is not consistent with G.S. 131D-10.3(h)(2) as written. The rule is a complete prohibition on certain applicants being licensed while the statute only prohibits licensure for a certain time period. Since the General Assembly has set the standard, there is no authority cited for the agency to change it. Similarly, Subparagraph (e)(2) is not consistent with G.S. 131D-10.3(h)(1) by making an absolute prohibition beyond 60 months. There is the same issue in Subparagraph (e)(4). Similarly, Subparagraph (e)(2) is not consistent with G.S. 131D-10.3(h)(1) by making an absolute prohibition beyond 60 months. There is the same issue in (e)(4).

10A NCAC 70J .0106 – The Commission objected to this rule based on lack of ambiguity. In (a)(1)(B) and (C), it is not clear how much space is required between the sides of beds. Part (B) seems to say that the sides of beds must be three feet apart while Part (C) only requires that they be 30 inches apart. It is not clear which is the requirement. This objection applies to existing language in the rule.

#### **Sheriffs Education and Training Standards Commission**

All rules were approved unanimously.

#### **Board of Massage and Bodywork Therapy**

21 NCAC 30 .0624 –

Charles Wilkins Representing the Board addressed the Commission.

The Commission voted in favor of Commissioner Bell's motion to extend the period of review for this rule. It extended the period of review to allow Mr. Wilkins and Commission Counsel Deluca to consult and see if there could be some agreement either as to the authority for the rule or to develop satisfactory language for this rule.

Commissioner Osborne was not present during this vote.

#### **Board of Nursing**

All rules were approved unanimously.

Commissioner Dunklin was not present during this vote.

#### **Board of Examiners for Engineers and Surveyors**

All rules were approved unanimously with the following exceptions:

David Tuttle representing the Board addressed the Commission.

21 NCAC 56 .0701 – The Commission objected to this Rule based on ambiguity. In (e)(5) page 3 line 8 and (e)(6) line 10 it is not clear what is included in the term “licensee’s organization.” It is not clear whether this is restricted to the business entity under which the licensee is engaging

in the practice of engineering or surveying or whether it expands to include professional societies, boards or memberships.

21 NCAC 56 .1602 – The Commission voted to extend the period of review for this rule. The Commission did this to give Mr. Tuttle an opportunity to explore with his surveyor board members acceptable language which could define in (a) line 4 what is meant or required by the necessity for a licensee “to make adequate investigation” or “to determine.” This was prompted by Mr. DeLuca's earlier technical change request to delete or define “adequate.” It would seem that an “investigation to determine if there are encroachments, gaps, lappages, or other irregularities along each line surveyed” is the definition of “adequate” and makes that word unnecessary. It is unclear what that word adds to the requirements and appears to make the rule ambiguous. The same issue applies in line 6 in regards to what constitutes a “nearby” closed or verified traverse. By requiring that the points be from a “nearby” closed or verified traverse, there is an implication that some point may be too far away to be used. If that is the case then there needs to be a definition of “nearby” or a listing of the standards that are to be used to make that determination.

#### **TEMPORARY RULES**

There were no temporary rules filed for review.

#### **COMMISSION PROCEDURES AND OTHER BUSINESS**

The Commissioners discussed changing the start time of next month's meeting to 10:00 a.m. The out of town commissioners seemed to agree that they would be travelling to the meeting the morning of the meeting and would prefer the later start time. Ms Simpson agreed that she too would prefer the later start time. The Commissioners seemed to agree that they would likely make the change permanent.

The Commissioners discussed voting to elect new officers at next month's meeting.

The meeting adjourned at 3:55 p.m.

The next scheduled meeting of the Commission is Thursday, August 18 at 10:00 a.m.

Respectfully Submitted,

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Julie Edwards  
Editorial Assistant

Minutes approved by the Rules Review Commission.

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Judge Ralph A. Walker/Chair

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Date